

AGREEMENT ON MITIGATION STRATEGY
pertaining to
IMPLEMENTATION AND OPERATION OF
THE RANCHO SAN DIEGO MITIGATION BANK

I. INTRODUCTION

The purpose of this document is to implement the procedure and terms of a mitigation bank for the property known as Rancho San Diego (Figure 1 and 2). This mitigation bank is comprised of two parcels known as Rancho San Diego and Sweetwater 2. The Rancho San Diego parcel consists of the areas commonly known as Campo Village North, Campo Village South, and Jamacha Village West, Phases 1 and 2 (excluding the Town Center Lot, the Restaurant Site, and the Grossmont High School Site). This agreement is among the San Diego Association of Governments (SANDAG), California Department of Transportation (CALTRANS), U.S. Fish and Wildlife Service (USFWS), and California Department of Fish and Game (CDFG). These agencies recognize the importance of early coordination and planning for mitigation of impacts to natural resources.

The lands comprising the RSD Bank will be owned and managed by the USFWS as a unit of the National Wildlife Refuge System. The Rancho San Diego lands will be acquired by the Service subject to a condition in the purchase agreement that requires the establishment of a Mitigation Bank Agreement.

Planning for and providing compensation in advance for unavoidable losses from project impacts is one approach to minimize the adverse impacts from lost habitat. The Rancho San Diego Mitigation bank (RSD Bank) possesses endangered species and sensitive vegetation communities. This agreement addresses only non-wetland resources. A separate document will be prepared addressing specific agreements on wetland mitigation to be conserved by the RSD Bank once necessary data are collected. Advance compensation affords several advantages over the customary method, including: 1) a more effective planning effort, often allowing integration into larger efforts that are consistent with and add to regional preservation goals and objectives; 2) a reduction in temporal losses of natural resources values; 3) creation of a cooperative atmosphere resulting in more amicable negotiations and early resolution of conflicts; and 4) facilitation of project completion.

The technique of mitigation banking is a method of providing advance compensation for similar impacts from several future projects in a consolidated effort. The additional advantages of a banking approach are: 1) compensation for small losses that otherwise

may not be fully or successfully replaced; 2) the consolidation of piecemeal efforts to increase management options and provide greater benefits and greater long-term protection through conservation of larger habitat areas; 3) economies of scale in both creation and management; and 4) easier monitoring and evaluation.

II. PURPOSE

SANDAG, CALTRANS, and the County of San Diego (hereafter referred to as Owners) have proposed the creation of the Rancho San Diego Mitigation Bank (hereafter referred to as RSD Bank) in east San Diego County south of El Cajon adjacent to Sweetwater River consisting of the Rancho San Diego and Sweetwater 2 parcels. This Agreement on Mitigation Strategy outlines the intention, conditions, and procedures under which the RSD Bank will be applied to projects. Restoration of some habitats is possible and will be specifically addressed in a supplemental document. The presence of endangered species on the RSD Bank will be a major design consideration in the planning and implementation of restoration. The RSD Bank will primarily provide coastal sage scrub and riparian/wetlands habitats, but will also provide opportunity to create oak woodlands and other upland habitats on disturbed/ruderal habitat with minimal biological values as agreed to by USFWS and CDFG.

Implementation of the bank will facilitate compliance with the Federal and State Endangered Species Act, Executive Order 11990 (Protection of Wetlands), the Clean Water Act (33 USC, 1344), Fish and Wildlife Coordination Act (16 USC, 661-667). RSD will enable compliance with these guidance directives with high value replacement habitat for unavoidable impacts associated with activities while maximizing benefits to the natural environment. Although it is recognized that off-site mitigation is not the preferred option, it is also recognized that frequently on-site habitat mitigation is not practical or possible to accomplish in some situations. RSD Bank will be particularly practical for those projects with minor individual, but substantial cumulative impacts, which is often the case with improvements/modifications to existing transportation facilities and other government projects.

This agreement establishes a minimum resource base for the species and habitats that will be the units of exchange in the banking process for non-wetland resources. It provides the conditions under which the bank can be used for compensation of project impacts. It develops the framework for tracking the debiting and crediting of banking transactions.

III. GUIDELINES AND POLICIES

The implementation, use, operation and maintenance of the RSD Bank shall be consistent with the following guidelines and/or policy statements

- Federal Guidance for the Establishment, Use and Operation of Mitigation Banks; Notice (Corps of Engineers, Environmental Protection Agency, Natural Resources Conservation Service, Fish and Wildlife Service, National Oceanic and Atmospheric Administration, March 6, 1995)
- Habitat Mitigation and Monitoring Proposal Guidelines (Corps of Engineers, Los Angeles District)
- A Policy for the Establishment and Use of Conservation Banks in California, The Resources Agency of the State of California
- U.S. Fish and Wildlife Service Guidance on Mitigation Banking (1983 and 1988) (September 12, 1994)
- Mitigation Banking Guidance U.S. Environmental Protection Agency Region IX (December 20, 1991)
- U.S. Fish and Wildlife Service Mitigation Policy (January 23, 1981)
- Memorandum of Agreement on Early Mitigation Planning for Transportation Improvements in California (1991).
- Memorandum of Understanding Between the Department of Transportation and the Department of Fish and Game Regarding Construction of Transportation Facilities and Protection of Fish and Wildlife Resources (1979)
- Memorandum of Understanding Between the California Department of Transportation and the U.S. Fish and Wildlife Service (1988)
- EPA/ACOE MOA Concerning Determination of Mitigation Under the Clean Water Act Section 404 (b) (1) Guidelines (February 6, 1990)
- Applying the Section 404 Permit Process
- Presidential Executive Order 11990 (1987)
- Senate Concurrent Resolution 17 for the protection of oak woodlands in California (1989)

IV. APPLICABLE ECOREGION

RSD Bank is established to off-set appropriate habitat impacts from transportation and other government sponsored projects by the Owners and development projects by others in cis-montane San Diego County (Figure 3). This area is generally characterized as western San Diego County below the 2000 foot elevation level.

V. CRITERIA FOR UTILIZING THE BANK

Use of RSD Bank will be deemed appropriate for compensation of species and habitat impacts when the following criteria have been met:

All practicable measures to avoid and minimize resource loss have been incorporated into the project design;

An evaluation of the impacted habitat's values has been accepted by the resource agencies;

Lead agency and resource agencies have agreed that total on-site replacement is not practicable, is inappropriate, or not in the best interest of the long-term protection and maintenance of the resource;

The impact is within the defined ecoregion, unless an unusual situation exists and use of the bank is agreed to as the most appropriate action by the involved agencies;

The habitat being lost fits one of the defined habitat classes within the bank and that habitat class has sufficient credits available to mitigate for the habitat being lost. However, in agreed upon situations a relatively scarce or threatened resource may be substituted as compensation for loss of a less threatened resource. Out-of-kind mitigation must be agreed upon by all the signatory agencies;

At the time a wetland banking system has been implemented, a delineation of wetlands subject to jurisdiction under Section 404 of the Clean Water Act has been verified by the U.S. Army Corps of Engineers (ACOE) in coordination with FWS.

A decision to allow use of the mitigation bank for wetland losses shall be made by the FWS-Division of Ecological Services, CDFG, EPA and the ACOE for each Section 404 permit application. Use of the bank shall ensure that there is no net loss of wetland acres or value resulting from implementation of a specific project.

VI. APPROPRIATE HABITAT TYPES

The goal of the RSD Bank is to provide a high quality complex of habitats and sensitive species. A wetlands component will be developed following completion of requirements by ACOE.

Six vegetation communities including two wetland and/or waters associated communities have been identified in the RSD Bank. The existing vegetation communities will be used as the mitigation replacement habitat. Additional wetlands will also be created and will approximate the existing wetland communities on the RSD Bank.

The specific vegetation communities available as replacement habitat are:

- 1) Coastal sage scrub
- 2) Riparian woodland/scrub

- 3) Marsh/Riparian scrub
- 4) Chaparral
- 5) Oak woodland
- 6) Native grassland

The wetland mitigation bank component will be initiated following final determination of existing wetlands. Suitable locations will be identified for wetland creation. The Owners will coordinate with the Los Angeles Office of the ACOE, CDFG and the USFWS on the final determination of the existing wetlands restoration capabilities on RSD Bank. Those Owners participating in the creation of wetlands will determine credit allocation and inform the Bank Manager in writing.

VII. DEBIT AND CREDITING PROCEDURES

The USFWS will be the responsible agency for managing the RSD Bank. The Carlsbad Field Office of the USFWS in coordination with CDFG, SANDAG, CALTRANS, San Diego County, shall perform all duties necessary to maintain the RSD Bank account, and all other specified records and reports.

Credit allocation by percentage is based upon the fiscal participation. Participating credit holders are SANDAG at 53%, CALTRANS at 23% and County of San Diego at 24%.

The Carlsbad Office of the USFWS will be informed in writing of the credits available to each of the Owners. Owners will maintain the right to renegotiate credits among themselves. Resources will include acreage and species population counts. Appendix A establishes the baseline population and acreage for resources in the RSD Bank. As each Owner uses credits, deductions will be made in the appropriate Owner account.

Deductions will not exceed the total numbers and acreage listed in Appendix A. The RSD Bank shall have no fewer acres and resource values than are set forth in the resource baseline in Appendix A and C, which baseline is based upon the most current data available and has been agreed to by USFWS, CDFG, SANDAG and CALTRANS. Owners may increase bank population counts if they complete a three year survey which indicates consistently higher numbers than listed in Appendix A. The technical methodology of species censusing shall be mutually acceptable to all signatory parties. In the case of plant species, the identification of a new population not previously included in the source material will constitute sufficient documentation to amend Appendix A. If it is unclear whether specific populations were included, a survey of the entire RSD Bank may be required as determined by the signatory agencies.

The Owner agency shall inform in writing the Bank Manager, at the earliest opportunity, whenever a project meets the criteria of this agreement and mitigation at RSD Bank is being considered. Prior to contacting the Bank Manager, the Owner proposing to use RSD Bank for credit, shall contact the remaining Co-owners.

Project lead agency and resource agencies must agree to use of the RSD Bank as compensation for specific habitat losses. Such agreement will be reached during the CEQA/NEPA process and its documentation, except for those projects with circulated draft environmental documents at the time of execution of this agreement. This condition does not apply to projects with circulated draft environmental documents at the time-of execution of this agreement. The Bank Manager shall insure that all signatory agencies are notified when use of the mitigation bank is proposed. Debiting of the bank account will occur after the project has final design approval and appropriate permits, and prior to any activity which could adversely impact the existing habitat values. The Bank Manager will maintain an account of all pending debit actions to ensure adequate habitat credits are available before the bank is considered for a new project. The Bank Manager will send action notices to each signatory agency after each change in balance, credit or debit.

The "currency of exchange" is defined as an area measured in acre units and, where appropriate, count of sensitive species. The mitigation ratios will be established for each project as it is reviewed by the appropriate regulatory, permitting, and resource agencies during the environmental document circulation.

Debits will not be applied to any specific plot of land within RSD Bank. Debits will be applied to the total acreage of habitat within RSD Bank. Total credits drawn from the bank, whether based on acreage by vegetation type or acres for particular species, shall not exceed the total acres as identified in Appendix A. An on-going tally of acreage previously debited and credits remaining will be maintained. Out of kind exchanges will only be made with the consent of CDFG and USFWS.

The Bank has been designed to provide high quality resources with a wide range of values and functions important to the natural landscape of San Diego County. Although primarily established to provide threatened and endangered species habitat values, it is expected that the RSD Bank as a whole will provide additional values above those required for project impacts. Therefore, it is agreed that the RSD Bank units may provide credit for other impacted resources (Appendix C.). The Owners may request that specific additional credit be granted for a previously unspecified resource value. Use of mitigation bank credits for other resource values will be determined on a project by project basis by an interagency evaluation and must be approved by the lead agency and resources agencies.

VIII. MONITORING

Monitoring of existing resources on the RSD Bank shall be the responsibility of the USFWS and will be addressed in its Management Plan for the Rancho San Diego Unit

of the San Diego National Wildlife Refuge.

A monitoring program to assess the growth and maturation of the habitat creation will be developed when the RSD Wetland Bank agreement is prepared with the ACOE, EPA and CDFG. Upland monitoring programs for restoration mitigation projects shall be determined in coordination with CDFG and USFWS during the environmental review process of the impacting project.

IX. MANAGEMENT

The lands comprising the RSD Bank will be owned and managed by the USFWS as a unit of the National Wildlife Refuge System. The Rancho San Diego lands will be acquired by the Service subject to a condition in the purchase agreement that requires the establishment of a Mitigation Bank Agreement. The Service agreed to acquire Rancho San Diego and operate the Rancho San Diego Mitigation Bank without reimbursement for Service administration and management expenses from the SANDAG, County of San Diego, and CALTRANS.

The Service will be preparing management plans for the Rancho San Diego unit for rare species monitoring, habitat restoration, wildfire, alien species, public use and other actions. The public use plan will identify certain recreational activities, such as hiking and equestrian trails, that will be managed to be compatible with the purposes of the Rancho San Diego unit and in coordination with the County of San Diego's regional trail system. The Service is also grading and providing access to a 23 acre equestrian facility located along the north side of Campo Road pursuant to a condition in the purchase agreement.

Future Wetland Habitat Creation

The goals for the process are: 1) to identify candidate wetland creation sites; 2) define the planning and implementation phases for construction and replacement of wetlands; 3) protect endangered and threatened species, archaeological and cultural sites, and other national resources; and, 4) provide the sponsoring agency with certainty that the construction work will proceed in an efficient and cost effective manner.

Pre-Project Phase: Wetland Delineations and Wetland Creation Sites

Wetland delineations and identification of wetland creation sites at RSD Bank will be conducted by the SANDAG, County of San Diego, and/or CALTRANS in coordination

with the U.S. Army Corps of Engineers (ACOE), FWS and CDFG. The ACOE, in consultation with the FWS and CDFG, shall approve the suitability of the wetland candidate creation sites. The areas approved as wetland creation sites shall be available for wetland habitat creation so long as conditions within the wetland creation sites do not support sensitive resources or other biological values that are comparable to the goals of the planned habitat creation.

Project Approval Phase: Compliance and Planning Approvals

Each sponsoring agency (SANDAG, County of San Diego, and CALTRANS) shall be responsible for securing the local, state, and federal planning and compliance approvals necessary to create wetland habitats at the wetland creation sites at Rancho San Diego Bank.

Each wetland/riparian creation project shall be independently reviewed by the FWS for suitability and construction at the proposed location within the RSD Bank. Federal and State approvals shall be obtained prior to commencement of work. These approvals include, but are not limited to, Section 404 of the Clean Water Act, Endangered Species Act-Federal and State, National Environmental Policy Act, and CDFG Streambed Alteration Agreement, Section 1601 of the Fish and Game Code and a Fish and Wildlife Special Use Permit.

Project Construction Phase: Special Use Permit

At the time that the sponsoring agency has obtained all other the planning and compliance approvals necessary to construct the wetland creation project, the Service, following a determination that all applicable permit requirements have been met, shall issue a Special Use Permit to the sponsoring agency to conduct the work necessary to create riparian or wetland habitats within a wetland creation site on RSD Bank. Final Construction designs and specifications shall be provided to the Service by the sponsoring agency prior to the issuance of the Special Use Permit. The Special Use Permit shall include conditions to protect endangered and threatened species, archaeological and cultural sites, and other resources as identified, in the planning process. Construction activities will be controlled to avoid the active breeding season of sensitive species proximate to the site. Following construction activity, the sponsoring agency shall actively monitor and maintain the site to insure the habitat creation is successful. The sponsoring agency is responsible for acceptable maintenance activities including routine weeding, irrigation repair, and hand tool activity. Noise caused by various maintenance activities shall be carefully controlled to prevent disruption to sensitive species adjacent to higher quality habitats. The occurrence of sensitive species within the creation area will not stop maintenance activities entirely. The Special Use Permit shall expire upon meeting performance criteria and monitoring requirements agreed upon by the sponsoring agency and Service.

X. EFFECTIVE DATE, TERMINATION OR MODIFICATION

This Agreement on Mitigation Strategy will become effective when approved by

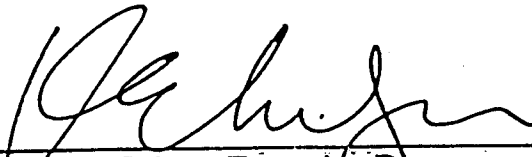
**Caltrans District 11 Director,
SANDAG Executive Director,
U.S. Fish and Wildlife Service, Acting Refuge Manager, Southern California Coastal
Refuge Complex
U.S. Fish and Wildlife Service, Field Supervisor, Ecological Services, Carlsbad Office.
California Department of Fish and Game, Interim Director**

This agreement may only be modified with the written approval of all signatories to the Agreement on Mitigation Strategy. Modifications may be proposed by a single or inter-agency team of signatories. Proposed modifications will be submitted in writing for a sixty-day period of review to all signatories.

Any credit Owner may terminate its participation in this agreement upon written notice to all other signatories. The terminating credit owner may sell remaining credits, if any, to the remaining credit owners or make them available to other public organization.

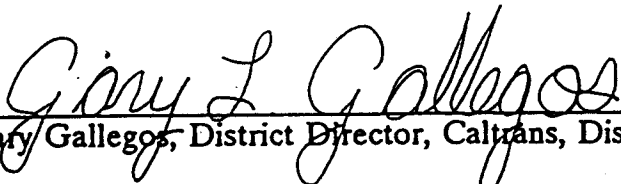
This agreement is intended to supplement, not replace, any existing agreements between any of the parties.

For the SAN DIEGO ASSOCIATION OF GOVERNMENTS


Kenneth E. Sulzer, Executive Director

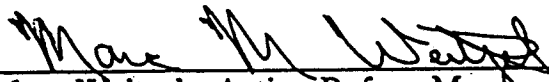
12-1-95
Date

For the CALIFORNIA DEPARTMENT OF TRANSPORTATION



Gary Gallegos, District Director, Caltrans, District 11

11-30-95
Date

For the U.S. FISH AND WILDLIFE SERVICE

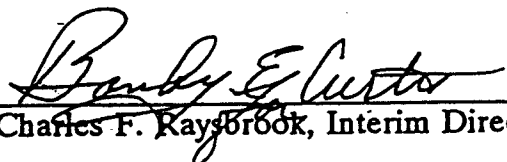

Marc Weitzel, Acting Refuge Manager,
Southern California Coastal Refuge Complex

8 Dec/95
Date


Gail Kobetich, Field Supervisor,
Ecological Services, Carlsbad Office

12.5.95
Date

For the CALIFORNIA DEPARTMENT OF FISH AND GAME


Charles F. Raybrook, Interim Director

Jan 10, 1996
Date